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John S. Hendricks

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EXAMINER

SHELEHEDA, JAMES R

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

09/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/966,594

Applicant(s)

HENDRICKS, JOHN S.

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 02/01/07 have been fully considered but they are not persuasive.

On pages 7-10, of applicant's response, applicant argues that claims 1, 7 and 16, require individual profiles to be combined and used jointly.

In response, it is noted that c

McMullan and Strubbe fails to disclose wherein individual profiles may be used jointly, as required by the claims.

In response, it is noted that claims 1 and 7 merely require *information* for a first user and *information* for a second user, and not **individual profiles** as applicant suggests.

Thus, in this case McMullan specifically discloses wherein a "household" profile may be generated for all users of the terminal. Thus, the household profile clearly includes a first user information associated with a first user and a second information associated with a second user for joint use, as the profile includes information associated with every individual user of the system (column 25, line 50-column 26, line 15), thus meeting the claim language. There is no requirement for a plurality of **profiles** which are then combined, or jointly used, as applicant suggests.

As to claim 16, as indicated in the rejections, Strubbe discloses generating a favorites menu based upon a viewer profile. McMullan indicates that it was known in the art to both separately store profile data for individual viewers (column 25, lines 50-68) and to consolidate profile data for plural viewers within a *single* profile (through a household profile; column 26, line 1-15).

Thus, when generating a favorites menu based upon a profile (as taught by Strubbe) consisting a household profile (as taught by McMullan), the system would be generating a favorites menu bases on two sets of viewer information (as the household profile includes information on all of the viewers within the household).

As the creation of individual viewer profiles was known to those of ordinary skill in the art, and the creation of a household profile containing the cumulative profile information of multiple users was known to those of ordinary skill in the art, the it would have been obvious to one of ordinary skill in the art to combine sets of individual viewer profiles into a single profile to identify overall viewing patterns, as the creation of the overall or "household" viewing profile is in no way dependent upon the method of collecting the viewer information. Thus several individual user profiles could be used in combination to achieve the predictable result of creating an overall or "household" profile.

Applicant's arguments are not convincing as all of the claimed elements were known in the prior art and one skilled in the art could have easily combined the elements as claimed by known methods with no change in their respective functions,

and the combination would have yielded predictable results to one of ordinary skill in the art at time of invention.

Finally, in regards to applicant's arguments towards "joint viewing" and a "best match", the parent application, 07/991,074, merely indicates that two sets of viewer profile information may be used to find a "best match" for joint viewing (see page 109 of the 07 application). There is no specific indication of how this would be performed or any sort of disclosure of the supposed benefits that appellant indicates.

As the "household" profile of McMullan would have viewer interest information for all of the viewers, it would certainly be more accurate and provide a better match for recommending programming to the multiple viewers, than a profile which was dedicated to only one of the viewers. Thus, the cumulative profile described by McMullan provides for all of the claim limitations and benefits described within appellant's specification. Applicant's arguments that their invention provides for any additional advantages are simply not supported. No specific method for using viewing information for two viewer's was ever disclosed. Thus, McMullan's household profile, which provides a means for simultaneously characterizing more than one viewer, fully reads upon applicant's system.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 4, 10, 12 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The disclosure as originally filed describes providing a favorites menu based upon frequently watched channels (page 4, lines 5-20). This disclosure contains no explicit support for providing joint viewing.

The parent application, 07//991,074, provides for using two sets of viewer profile information to provide joint viewing (see page 109, lines 4-8), however, this disclosure explicitly indicates that the profiles for joint viewing do not include frequently watched channel information (page 107, line 3-page 109, line 3), as frequently watched channel information is utilized separately (page 105, lines 1-21). The disclosure as originally filed fails to provide support for a favorites menu for joint viewing based upon user profiles including frequently watched channel.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strubbe (5,223,924) (Strubbe '924) (of record) in view of McMullan, Jr. (5,251,324) (of record).

Strubbe (5,223,924) (Strubbe '924) incorporates by reference Strubbe et al. (5,047,867) (Strubbe '867) [see Strubbe '924 at column 2, lines 31-49 and column 4, lines 27-38].

As to claim 1, while Strubbe '924 discloses a set top terminal for generating an interactive electronic program guide for display on a television connected to the set top terminal (see Strubbe '924 at Fig. 1; column 1, line 56-column 2, line 15), the terminal comprising:

means for retrieving information associated with a subscriber (see Strubbe '924 at column 4, line 59-column 5, line 32);

means for receiving a television signal (see Strubbe '924 at column 3, lines 38-58);

means for extracting individual programs from the television signal (see Strubbe '924 at column 3, lines 38-58);

means for generating an electronic program guide for controlling display of content on a television screen (see Strubbe '924 at column 3, line 59-column 4, line 27 and column 5, lines 33-47), the guide comprising:

a favorites menu including names of programs available for selection (see Strubbe '924 at column 5, lines 12-47), wherein the programs included in the favorites menu are for viewing by said subscriber based on the information (see Strubbe '924 at

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column 5, lines 12-47) used by a matching algorithm to determine a best match for viewing (see Strubbe '924 at column 5, lines 12-47); and

means for receiving selection signals from a user input (see Strubbe '924 at column 4, line 59-column 5, line 47), he fails to specifically disclose a first user information associated with a first subscriber and a second user information associated with a second subscriber and joint viewing.

In an analogous art, McMullan discloses a cable television system (see Fig. 1) wherein a terminal profile is created to represent viewing patterns of multiple subscribers in a household (column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) based upon received first user information from a first user and received second information from a second user (wherein the terminal profile stores viewing entries for every individual member of the household; column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) to represent joint viewing characteristics of the users in the household (column 26, lines 1-15) for the typical benefit of enabling all viewers in a household to be represented and correlated with different program types and information (column 25, line 50-column 26, line 15).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Strubbe's system to include a first user information associated with a first subscriber and a second user information associated with a second subscriber and joint viewing, as taught by the combination with McMullan, for

the typical benefit of enabling the allowing individual viewers to be identified and correlated with different programming.

As to claim 2, Strubbe '924 and McMullan disclose wherein the means for retrieving said first and second user information includes means for requesting information from said first and second subscriber (see Strubbe '924 at column 5, lines 12-26 and McMullan at column 26, lines 1-15) and means for receiving a response from the first and second subscriber (see Strubbe '924 at column 4, line 59-column 5, line 26 and McMullan at column 26, lines 1-15).

As to claim 3, Strubbe '924 and McMullan disclose wherein the means for retrieving said first and second user information includes means for identifying frequently watched programs (see Strubbe '867 at column 5, lines 20-32 and see Strubbe '924 at column 5, lines 23-32 and McMullan at column 26, lines 1-15) and means for storing in memory identifiers of the frequently watched programs (see Strubbe '867 at column 5, lines 20-32 and column 4, lines 23-29 and see Strubbe '924 at column 5, lines 23-32).

As to claim 4, Strubbe '924 and McMullan disclose wherein the means for retrieving said first and second user information includes means for identifying frequently watched channels (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62 and McMullan at column 26, lines 1-15)

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and means for storing in memory the frequently watched channels (see Strubbe '867 at column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62).

As to claim 5, Strubbe '924 and McMullan disclose wherein the menu includes a list of frequently watched programs (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62).

As to claim 6, Strubbe '924 and McMullan disclose means for receiving program content information (see Strubbe '924 at column 3, line 59-column 4, line 16) and means for matching the program content information with the first and second user information (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19 and McMullan at column 26, lines 1-15), and wherein the means for generating includes means for generating the favorites menu to display programs selected by the means for matching (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19).

As to claim 7, while Strubbe '924 discloses a set top terminal (see Strubbe '924 at Fig. 1; column 1, line 56-column 2, line 15), comprising:

means for receiving subscriber information including information about television viewing preferences (see Strubbe '924 at column 4, line 59-column 5, line 32);

a memory that stores the subscriber information (see Strubbe '924 at Fig. 3, 54, column 4, line 59-column 5, line 32);

means for receiving a television signal from an operations center (see Strubbe '924 at column 3, lines 38-58);

means for extracting from the signal individual programs for display on a television associated with the terminal (see Strubbe '924 at Fig. 1; column 3, lines 38-58); and

means for generating an interactive program menu on the television (see Strubbe '924 at column 3, line 59-column 4, line 27 and column 5, lines 33-47), listing a group of available programs for viewing by a subscriber (see Strubbe '924 at column 5, lines 12-47), the group being based on the subscriber information (see Strubbe '924 at column 5, lines 12-47) used by a matching algorithm to determine a best match for viewing (see Strubbe '924 at column 5, lines 12-47), he fails to specifically disclose first and second subscriber information and joint viewing.

In an analogous art, McMullan discloses a cable television system (see Fig. 1) wherein a terminal profile is created to represent viewing patterns of multiple subscribers in a household (column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) based upon received first user information from a first user and received second information from a second user (wherein the terminal profile stores viewing entries for every individual member of the household; column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) to represent joint viewing characteristics of the users in the household (column 26, lines 1-15) for the typical benefit of enabling all viewers in a

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household to be represented and correlated with different program types and information (column 25, line 50-column 26, line 15).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Strubbe's system to include first and second subscriber information and joint viewing, as taught by the combination with McMullan, for the typical benefit of enabling the allowing individual viewers to be identified and correlated with different programming.

As to claim 8, Strubbe '924 and McMullan disclose means for receiving a signal from a user input device selecting one of the available programs (see Strubbe '924 at column 3, lines 9-58, column 4, lines 27-38 and column 5, lines 33-42), and means for causing the selected program to be displayed on the television (display, 25; see Strubbe '924 at column 3, lines 9-58, column 4, lines 27-38 and column 5, lines 33-42).

As to claim 9, Strubbe '924 and McMullan disclose wherein the television viewing preferences include frequently watched programs (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62).

As to claim 10, Strubbe '924 and McMullan disclose wherein the television viewing preferences include frequently watched channels (see Strubbe '867 at Fig. 6a; column 5, lines 20-32, column 4, lines 23-29 and column 1, lines 50-62).

As to claim 11, Strubbe '924 and McMullan disclose wherein the means for receiving first and second subscriber information comprises means for automatically tracking information related to viewing habits of the subscribers (see Strubbe '924 at column 5, lines 23-32).

As to claim 12, Strubbe '924 and McMullan disclose wherein the means for automatically tracking comprises automatically tracking information related to frequently watched programs (see Strubbe '924 at column 5, lines 23-32).

As to claim 13, Strubbe '924 and McMullan disclose wherein the means for receiving first and second subscriber information comprises means for activating a learning mode (see Strubbe '924 at column 5, lines 23-32) and means for receiving the respective subscriber information while the learning mode is activated (see Strubbe '924 at column 5, lines 23-32).

As to claim 14, Strubbe '924 and McMullan disclose wherein the means for receiving first and second subscriber information comprises means for querying a subscriber (see Strubbe '924 at column 5, lines 12-26), and means for receiving the viewing information in response to the query (see Strubbe '924 at column 4, line 59-column 5, line 26).

As to claim 15, while Strubbe '924 discloses means for receiving program content information for the individual programs from the operations center (see Strubbe '924 at column 3, line 59-column 4, line 16); and

means for matching individual programs with subscriber information using the program content information (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19), and wherein the means for generating comprises means for generating the programs identified by the means for matching (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19), he fails to specifically disclose first and second subscriber information.

In an analogous art, McMullan discloses a cable television system (see Fig. 1) wherein individual profiles are created for multiple subscribers (column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) based upon received user information (column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) for the typical benefit of enabling the allowing individual viewers to be identified and correlated with different programming (column 25, line 50-column 26, line 15).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Strubbe's system to include first and second subscriber information, as taught by McMullan, for the typical benefit of enabling the allowing individual viewers to be identified and correlated with different programming.

As to claim 16, while Strubbe '924 discloses a set top terminal for generating a customized menu of available programs for selection by a user (see Strubbe '924 at Fig. 1; column 1, line 56-column 2, line 15), the terminal comprising:

means for receiving a television signal (see Strubbe '924 at column 3, lines 38-58);

means for extracting individual programs from the television signal (see Strubbe '924 at Fig. 1; column 3, lines 38-58);

means for matching individual programs to a user of the terminal for viewing by said user (see Strubbe '924 at column 5, lines 33-47 and column 6, lines 5-19), using user information stored in a user profile (see Strubbe '924 at Fig. 3, 54, column 4, line 59-column 5, line 32) by a matching algorithm to determine a best match for viewing (see Strubbe '924 at column 5, lines 12-47); and

means for generating an interactive program menu (see Strubbe '924 at column 3, line 59-column 4, line 27 and column 5, lines 33-47) that displays selected programs identified by the means for matching (see Strubbe '924 at column 5, lines 12-47 and column 6, lines 5-24), he fails to specifically disclose two users and two user profiles, wherein each profile is associated with a user and joint viewing.

In an analogous art, McMullan discloses a cable television system (see Fig. 1) wherein a terminal profile is created to represent viewing patterns of multiple subscribers in a household (column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) based upon received first user information from a first user and received second information from a second user

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(column 5, lines 43-60, column 23, line 65-column 24, line 17 and column 25, line 50-column 26, line 15) to represent joint viewing characteristics of the users in the household (column 26, lines 1-15) for the typical benefit of enabling all viewers in a household to be represented and correlated with different program types and information (column 25, line 50-column 26, line 15).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Strubbe's system to include first and second subscriber information and joint viewing, as taught by the combination with McMullan, for the typical benefit of enabling the allowing individual viewers to be identified and correlated with different programming.

As to claim 17, Strubbe '924 and McMullan disclose wherein the means for matching comprises means for matching based on content of the individual programs (see Strubbe '924 at column 5, line 48-column 6, line 4 and column 3, line 59-column 4, line 2).

As to claim 18, Strubbe '924 and McMullan disclose wherein the means for matching comprises means for matching based on channels frequently watched by the user (see Strubbe '924 at column 5, line 48-column 6, line 4 and column 3, line 59-column 4, line 2).

As to claim 19, Strubbe '924 and McMullan disclose wherein the means for matching comprises means for matching based on programs frequently watched by the user (see Strubbe '924 at column 5, line 48-column 6, line 4 and column 3, line 59-column 4, line 2).

As to claim 20, while Strubbe and McMullan disclose wherein the means for matching comprises means for matching based on information related to the user, they fail to specifically disclose demographic information.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize user demographic information to recommend content to the user, such as the user's age, income level and marriage status, for the typical benefit of utilizing a simple, well known means to quickly characterize a user and identify probable likes/dislikes the user may have.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Strubbe and McMullan's system to include demographic information for the typical benefit of utilizing a simple, well known means to quickly characterize a user and identify probable likes/dislikes the user may have.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kaplan et al. (5,446,891) disclosing merging multiple individual user profiles to identify content appropriate to the overall group.

8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda
Patent Examiner
Art Unit 2623

JS


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